



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 4, 1998

Mr. James R. Satterwhite  
Executive Director  
Rural Capital Area Workforce Development Board  
P.O. Box 1565  
Round Rock, Texas 78680

OR98-2948

Dear Mr. Satterwhite:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120016.

The Rural Capital Area Workforce Development Board, Inc. (the "board") received a request for a copy of the RFP for the management of the one-stop career center and other sites, a copy of the winning proposal, and a copy of the contract awarded in connection with this RFP. You state that you have provided the requestor with a copy of the RFP and the contract. Although you do not take a position on the required public disclosure of the winning proposal, you have submitted the proposal to this office for review because "Lockheed Martin IMS has expressed to [you] that all or part of the proposal should not be shared as public information."

Since the proprietary interest of Lockheed Martin IMS Corporation ("Lockheed Martin") may be implicated by the release of its proposal, we notified Lockheed Martin about the request for information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Lockheed Martin responded by claiming that portions of its bid proposal are excepted from disclosure pursuant to sections 552.101, 552.102, and 552.110 of the Government Code.

Lockheed Martin's proposal includes the resumes of several of its employees (pp. 3-33, 3-39 through 3-40, and Attachment D). Lockheed Martin contends that these resumes are excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 of the Government Code for common-law invasion of privacy.<sup>1</sup> *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.).

For information to be protected from disclosure by the common-law right of privacy the information must be highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The Texas Supreme Court found the following types of information to be highly intimate and embarrassing: information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We do not find the professional qualifications of Lockheed Martin employees to be highly intimate and embarrassing information. See Open Records Decision No. 455 (1987) (qualifications of applicants for employment not protected by common-law right to privacy). Thus, we conclude that sections 552.101 and 552.102 do not except from disclosure the employee resumes included in the proposal or narrative descriptions of the employees’ expertise.

Section 552.110 of the Government Code protects the property interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Lockheed Martin contends that portions of its proposal are excepted from disclosure under section 552.110 as commercial or financial information. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts’ interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government’s ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. ORD 639 at 4 (1996). To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

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<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Having reviewed Lockheed Martin's arguments, we conclude that Lockheed Martin has not provided specific factual or evidentiary material to support its claim that publicly disclosing Attachment A (entitled "Personnel Policies") would cause it to suffer substantial competitive harm. We conclude that Lockheed Martin has demonstrated that publicly disclosing the following sections of its proposal would cause it to suffer substantial competitive harm: pp. 3-14 through 3-22, 3-27 through 3-29, and Section 4 (entitled "Budget Forms"). The board must withhold these sections of the proposal from disclosure under the commercial or financial information prong of section 552.110. All remaining portions of the proposal must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 120016

Enclosures: Submitted documents

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